

08/327,092


**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/327,092 10/21/94 FORTE

M 6811013A

 WILLSE, D  
EXAMINER

33M1/0626

ART UNIT PAPER NUMBER

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3308

DATE MAILED: 06/26/95

 This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

 A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ day(s) from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133
**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |  |  |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.                  |
| 5. <input checked="" type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____  |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 41-57 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2. ☒ Claims 1-40 have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 41-57 are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

**EXAMINER'S ACTION**

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The preliminary amendment of October 21, 1994, is acknowledged but has **NOT** been entered. Instead, the second claim "55" has been renumbered as claim --56-- and original claim 56 has been renumbered as claim --57--, for clerical reasons.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The Abstract of the Disclosure is objected to because of the inclusion of legal phraseology involving the word "means". Correction is required. See M.P.E.P. § 608.01(b).

The disclosure is objected to because of the following informalities:

On page 54, line 15, "having" should read --have--. On page 58, line 25, reference is made to a figure which does not exist; on line 35, "complementary" is misspelled. Numerous other errors were noted, and the Applicant is requested to review the specification for the purpose of correcting such errors. Appropriate correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 41-43, 45-48, 50-54, and 57 are rejected under 35 U.S.C. § 102(b) as being anticipated by Forte et al., U.S. patent no. 4,888,021. The embodiment illustrated in Figures 14-20 includes femoral condyles defined near concave rails 88, convex cam member surfaces 130, concave cam member surfaces 142, multi-radius tibial plateau bearing surface means 122 (column 9, lines 51-53), and follower member means 132 and 144. Regarding claims 45-48, 51-54, and 57, attention is directed to Figure 15, which shows surfaces on hinge post 106 and on femoral component 10, including sliding lateral surfaces as well as surfaces that engage each other in rolling and sliding contact when the joint nears full extension.

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Claims 44, 49, and 55-56 are rejected under 35 U.S.C. § 103 as being unpatentable over Forte et al., U.S. patent no. 4,888,021, in view of Walker, U.S. patent no. 3,837,009. To configure the hinge pin passageway through hinge post 106 as a slot in the Forte et al. invention would have been an obvious variant from the geometry set forth in Figures 4-5 of Walker, with one of ordinary skill having been motivated by the advantages cited in column 9, lines 49-59 and other portions of the Walker teaching as well as by the fact that Forte et al. also provide for laxity in the joint kinematics (e.g., column 7, lines 34-40).

Claims 41-50 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 41, line 26, "hingably" is believed to be a misspelling. (Attention is directed to claim 51, line 2 for comparison.) In claim 48, line 4, "said intercondylar space" lacks an antecedent basis.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Attention is directed to the figures of Hillberry et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is (703) 308-2903.

dhw

June 16, 1995

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